

DUKE ENERGY TRADING AND MARKETING, L.L.C.

Order No. EA-166-A

I. BACKGROUND

Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On March 9, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Duke Energy Trading and Marketing, L.L.C. (DETM) to transmit electric energy from the United States to Mexico as a power marketer. That two-year authorization will expire on March 9, 2000. On October 6, 1999, DETM filed an application with FE for a new five-year authorization to export electric energy to Mexico.

The electric energy to be exported will be purchased by DETM from electric utilities and Federal power marketing agencies within the United States. It would be delivered to Mexico over the international electric transmission facilities owned and operated by Central Power & Light Company (CPL), Comision Federal de Electricidad (CFE), the national electric utility of Mexico, El Paso Electric Company (EPE), and San Diego Gas & Electric Company (SDG&E).

Notice of the DETM export application was placed in the *Federal Register* on October 26, 1999, (64 FR 57634) requesting that comments, protests, and petitions to intervene be submitted to the DOE by November 26, 1999. None were received.

II. DISCUSSION and ANALYSIS

The authority requested of DOE by DETM is a necessary condition for exporting under section 202(e) of the FPA. DETM must make the necessary commercial arrangements, including obtaining all necessary transmission access required to wheel the exported energy to the foreign purchaser, and obtain any and all other regulatory approvals which may be required in order to effect the export. In considering the DETM request for service, the transmitting utilities would have to assess the electric reliability impacts of moving the export through their system and, presumably, would only provide service under terms and conditions that would not cause reliability problems on their system.

An export authorization issued under section 202(e) does not impose on transmitting utilities a requirement to provide service. However, DOE expects transmitting utilities owning

border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888, as amended (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶31,036 (1996)), as amended. The actual rates, terms and conditions of transmission service shall be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open Access Transmission Tariff on file with the FERC.

All recipients of export authorizations, including owners of border facilities for which Presidential permits have been issued, are required by their export authorization to conduct operations in accordance with the principles of the FPA and pertinent rules, regulations and orders, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. (See Enron Power Marketing, Inc., 77 FERC ¶ 61,013 (1996)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic interstate transmission of electricity.

Before an electricity export authorization is granted, DOE must find that the proposed export will not impair the sufficiency of electric supply within the U.S. and that it will not impede the coordinated use of regional transmission facilities. DOE has always used a flexible approach in determining the information necessary to evaluate reliability impacts for specific export proposals. In determining reliability impact for exports by power marketers or other entities operating in a similar manner, DOE has used a combination of established industry guidelines, operating procedures and/or infrastructure, as well as technical studies supporting authorizations issued for traditional entities operating at the border. Allowing these existing technical studies to suffice in this docket is sound and, thus, DOE need not perform additional reliability assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the previously authorized limit of the system.

III. FINDING

DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. Based on the above discussion and analysis, DOE has determined that the export of electric energy to Mexico as requested by DETM would not impair the sufficiency of electric power supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities provided that, for exports through the system of SDG&E, DETM coordinate exports with SDG&E and/or the control area operator or Independent System Operator (ISO), as appropriate, such that total exports across the SDG&E/CFE interconnection are in conformity with the operating limitations established by the

SDG&E/CFE operating nomogram and the Southern California Import Transmission Nomogram. For exports through the system of EPE, DETM shall coordinate such exports with EPE and/or the control area operator or ISO, as appropriate, such that total exports across the EPE/CFE interconnection are in conformity with the requirements of the Southern New Mexico Import nomogram that governs the amount of imports allowed into the Southern New Mexico area. These nomograms are on file in the Office of Fossil Energy for public review.

The circumstances described in the DETM application are virtually identical to those for which export authority had previously been granted in FE Order EA-166. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-166 proceeding.

IV. ORDER

Based on the above, it is hereby ordered that DETM is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by DETM pursuant to this Order may be delivered to Mexico only over the following existing international transmission facilities:

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
CPL	Brownsville, TX	138-kV	PP-94
CFE	Eagle Pass, TX	138-kV	PP-50
	Laredo, TX	138-kV	PP-57
	Falcon Dam, TX	138-kV	None
EPE	Diablo, NM	115-kV	PP-92
	Ascarate, TX	115-kV	PP-48
SDG&E	Miguel, CA	230-kV	PP-68
	Imperial Valley, CA	230-kV	PP-79

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A). Specifically:

(1) Exports by DETM shall not cause the total exports on a combination of the 138 kV facilities at the Falcon Dam and the facilities authorized by Presidential Permits PP-50,

PP-57, and PP-94 (issued to CFE and CPL) to exceed an instantaneous transmission rate of 600 MW during those times when the CPL system is at a minimum load condition. During all other load conditions on the CPL system, exports by DETM over the facilities identified in this subparagraph shall not cause the maximum rate of transmission to exceed:

(a) 300 MW for the 138 kV and 69 kV facilities authorized by Presidential Permit PP-94; or,

(b) 50 MW total for the 138 kV facilities at Falcon Dam and those authorized by Presidential Permits PP-50 and PP-57.

(2) Exports made by DETM pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-48 and PP-92 (issued to EPE) to exceed an instantaneous transmission rate of 200 MW. All exports made pursuant to this Order must be consistent with the operating limitations of the Southern New Mexico Import Nomogram.

(3) Exports made by DETM pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-68 and PP-79 (issued to SDG&E) to exceed an instantaneous transmission rate of 400 megawatts (MW). All exports made pursuant to this Order must be consistent with the operating limitations established by the SDG&E/CFE operating nomogram and the Southern California Import Transmission Nomogram.

(C) Amendment of the export authorizations from which the export limits contained in subparagraphs (B)(1) through (B)(3) were derived shall result in a concomitant change to the export limits contained in those subparagraphs. Notice will be provided to DETM of any amendments to existing export authorizations that would impact on this Order.

(D) DETM may commence exports only over those international transmission lines identified in paragraph (A) for which DETM provides DOE written evidence that sufficient transmission service has been obtained for delivery of the exported energy to the border. This evidence can consist of signed letters of agreement for the service between DETM and each Presidential permit holder and should identify specific facilities by name and Presidential permit number.

(E) In scheduling the delivery of electricity exports to Mexico, DETM shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, or independent system operators, as appropriate on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(F) DETM shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended.

(G) The authorization herein granted may be modified from time to time or terminated by further order of the DOE, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in paragraph (A).

(H) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(I) DETM shall make and preserve full and complete records with respect to the electric energy exported to Mexico. DETM shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, detailing for each month of the previous quarter: (1) the gross amount of electricity delivered, in kilowatt hours; (2) the consideration received for such energy; and (3) the maximum hourly rate of transmission, in kilowatts. Quarterly reports must be filed regardless of current activity and whether or not deliveries of electric energy have been made. If no transactions have been made, a one-sentence report indicating “no activity” for the previous quarter is sufficient.

Reports shall be submitted to the U.S. Department of Energy, Office of Fossil Energy, FE-27, 1000 Independence Avenue, SW, Washington, D.C. 20585-0305. Properly identified quarterly reports will also be accepted via facsimile at (202) 287-5736 to meet time requirements, but original copies should still be filed at the above address.

(J) In accordance with 10 C.F.R. §205.305, this authorization is not transferable or assignable, except in the event of the involuntary transfer of this authority by operation of law. Provided written notice of the involuntary transfer is given DOE within 30 days, this authorization shall continue in effect temporarily. This continuance also is contingent on the filing of an application for permanent authorization within 60 days of the involuntary transfer; the authorization shall then remain effective until a decision is made on the new application. In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application for a new export authorization, together with a statement of reasons for the transfer.

(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

(L) This authorization shall be effective for a period of five (5) years from the date of this order. Within six months prior to the expiration of this authorization, DETM may reapply for renewal of this authorization.

Issued in Washington, D.C., on December 22, 1999.

Anthony J. Como
Deputy Director, Electric Power Regulation
Office of Coal & Power Im/Ex
Office of Coal & Power Systems
Office of Fossil Energy